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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No. 77-454

MOORMAN MANUFACTURING COMPANY,
Appellant,

v.

G. D. BAIR, DIRECTOR OF REVENUE, STATE OF IOWA,
Appellee

MOTION OF MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

and

BRIEF OF MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., AS AMICUS CURIAE

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Motor Vehicle Manufacturers Association of the United States, Inc. (the Association) respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the Appellant has been obtained, but the Appellee has refused his consent.

The applicant, a non-profit trade association whose members manufacture and sell motor vehicles in the United States, has an interest in this case in that several of its members are assessed and are contesting the Iowa income tax. The assessed tax on these members is not being paid pending a final decision of the instant case, because their liability depends on a determination of the questions which are presented for decision herein.

The Association believes that Appellant will be unable to develop fully economic data bearing on this case. The Associa-

tion wishes to present factual information relating to the impact of the challenged tax on the U.S. automobile industry. This information cannot be presented by Appellant, and it will be unknown to the Court unless presented by the Association as *amicus curiae*. It is desirable that the Court have these facts before it in considering Appellant's jurisdictional statement, because these facts demonstrate the broad scope of the issues and their importance both in Iowa and nationally.

Respectfully submitted,

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INTEREST OF AMICUS CURIAE

Motor Vehicle Manufacturers Association of the United States, Inc. is a non-profit membership corporation organized under the laws of New York, and its members manufacture well over 90% of all passenger automobiles, trucks and busses produced in the United States. This brief is filed on behalf of the following members of the Association:

> American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, International Harvester Company, PACCAR, Inc., Walter Motor Truck Company, and Warner & Swasey Company

All of these members are engaged in interstate commerce. None of these members has production or assembly facilities in the State of Iowa, but sales by these members through interstate commerce into Iowa in 1976 alone were in excess of $1,250,000,000. Several members are presently contesting the

Iowa apportionment formula and all such contesting members have offered to pay Iowa income tax based on formulae involving the three factors of property, payroll and sales.

In addition, various members of the Association pay corporate income taxes in the other 45 jurisdictions (44 states and the District of Columbia) imposing such taxes, and the Court, by considering this case, can instruct all such taxing units as to the constitutional boundaries of their fiscal powers, thereby eliminating the uncertainties created by the Iowa Supreme Court's ruling.

THE ISSUE

The issue in this case is whether the single-factor destination sales formula for the "apportionment" of net income of foreign corporations to Iowa prescribed by Sections 423.33 and 422.35 of the Code of Iowa violates the Commerce Clause (Art I, Sec 8, Cl 3) of the Constitution of the United States and the Due Process and Equal Protection Clauses of the Fourteenth Amendment thereto.

The Iowa supreme court sustained the single-factor sales formula as constitutional. The *amicus curiae* believes that the Iowa supreme court did not give proper consideration to the clear policy direction provided by this Court to avoid the multiple taxation resulting from application of a statutory formula such as Iowa's.

ARGUMENT

In *General Motors Corp.* v. *District of Columbia*, 380 U.S. 553, 561-562, this Court implemented its "continuing concern for fair apportionment" by rejecting the District's apportionment formula based wholly on the sales factor:

> "The great majority of States imposing corporate income taxes apportion the total income of a corporation by application of a three-factor formula which gives equal weight to the geographical distribution of plant, payroll, and sales. The use of an apportionment formula based wholly on the sales factor, in the context of general use of the three-factor approach, will ordinarily result in multiple taxation of corporate net income; for the States in which the property and payroll of the corporation are located will allocate to them-

selves 67% of the corporation's income, whereas the jurisdictions in which the sales are made will allocate 100% of the income to themselves. Conversely, in some cases enterprises will have their payroll and plant located in the sales-factor jurisdictions and make their sales in the three-factor jurisdictions so that only 33% of their incomes will be subject to state taxation. In any case, the sheer inconsistency of the District formula with that generally prevailing may tend to result in the unhealthy fragmentation of enterprise and an uneconomic pattern of plant location, and so presents an added reason why this Court must give proper meaning to the relevant provisions of the District Code." 380 U.S. 553, 559-560.

That decision in 1964 provided a strong thrust toward uniformity, as evidenced by the wide spread adoption of the Uniform Division of Income for Tax Purposes Act and the fact that of the 46 jurisdictions presently imposing a corporate tax on net income, only Iowa imposes a statutory single-factor sales formula. In contrast, at the time of the *General Motors* decision, the Court noted a broader variety of state tax practices among the 38 states then having a corporate income tax, with 29 using a three-factor formula, three using a two-factor formula involving sales and property and four using formulae based on the geographic distribution of corporate sales. 380 U.S. 553, 559, Footnote 9.

The decision of the Iowa supreme court sustaining the constitutionality of this lone deviation, if left standing, would operate as a powerful centrifugal force in state taxation of interstate commerce, subvert the clear direction provided by this Court in *General Motors*, and provide a basis for new state tax burdens on interstate commerce tending to balkanize the common market of the United States.

The Iowa supreme court completely ignored this Court's express concerns about multiple taxation with the potential of "unhealthy fragmentation of enterprise and an uneconomic pattern of plant location . . . ." 380 U.S. 553, 560, and the clear admonition of possible constitutional problems when the Court stated:

"We of course do not mean to take any position on the constitutionality of a state income tax based on the sales factor alone. *For the present purpose, it is sufficient to note that the factors alluded to by this Court in justifying apportionment measures constitutionally challenged in the past lend little support to the use of an exclusively sales-oriented approach.* (Emphasis added). 380 U.S. 553, 561.

The Iowa supreme court ignored the district court's finding of fact that double taxation was the result of imposition of the Iowa tax. Indeed, double taxation is inherent and inevitable if a state chooses to use a single-factor sales formula when most other jurisdictions use a three-factor formula. The Iowa court stated, erroneously, that because a corporation is entitled to deduct from its taxable income one-half of the federal income tax it pays, impermissible double taxation will not result. 254 NW 2d 737, 751. This ignores the crucial fact, which is that the fraction which Iowa applies to the income figure has as its numerator sales in Iowa and as its denominator total sales, which, as this Court observed in *General Motors* could lead to 100% of a corporation's income being taxed in Iowa, and 67% of its income being taxed in other states which use the standard three-factor formula.

The deduction which the Iowa supreme court holds is a palliative against any double taxation is for 50% of that portion of the federal income tax "as is fairly and equitably allocable to Iowa", Code §422.35. The court does not expound upon how this deduction avoids double taxation. It says, after mentioning the deduction, that "Clearly, a corporation in Moorman's situation is not taxed by Iowa on 100% of its income from Iowa sales." 254 NW 2d 737, 751. But this is true under any taxing statute which provides for deductions, as almost all such statutes do. The pertinent question, however, is, not whether Iowa taxes all the income from Iowa sales, but rather, does Iowa tax any income which is not permissibly attributable to Iowa, resulting in that double taxation which is repugnant to the Constitution.

The invidious impact of the Iowa tax can be seen from two examples. Assume first a corporation whose properties or payroll in Iowa were non-existent or negligible in comparison to those located elsewhere, but which nonetheless sold all its

production in Iowa. Leaving aside some minor adjustments provided by statute, after giving effect to the deduction for 50% of federal taxes paid on income which Iowa allocates to itself, approximately 76% of that income will be taxed in Iowa.* However, states in which that corporation's property and employees are located, which employ the three-factor formula, will tax 67% of its income, including that portion already taxed by Iowa, with the result that 143% of its income will be taxed—not unlike this case, where the district court found, as a fact, that the Iowa formula resulted in 141.76% of Moorman's income being taxed.

Compare this impact upon a foreign corporation selling in Iowa with the impact upon an Iowa corporation selling all its goods in other states. In that case, the corporation would pay no income tax to Iowa with respect to such out-of-Iowa sales, and the other states, which employ a three-factor formula, would tax only 33% of its income, since they would only have the sales factor to apply, the other two factors (property and payroll) being attributable to Iowa.

Thus we have an Iowa corporation selling elsewhere being taxed on only 33% of its income, while a foreign corporation in Iowa is taxed on 143% of its income. This is the sort of tax climate which will lead to what this Court was concerned about in *General Motors*—an unhealthy fragmentation of enterprise and uneconomic pattern of plant location.

The burgeoning growth of state government drives legislators to seek new sources of revenue. In a state such as Iowa, second only to California in agricultural production, the revenues of foreign manufacturing corporations are an attractive target, especially when they are tapped by a tax which gives a competitive market advantage to local industry.

The interstate commerce to Iowa conducted by Association members alone is of major significance. 1976 Association data show 2,157,000 vehicles registered in Iowa. 1,573,000 were automobiles and 584,000 were commercial vehicles, operated by 1,926,000 licensed drivers. In 1976 alone, the Iowa formula burdened interstate commerce by extracting over $3,700,000 in taxes from Association members which would not be payable under the three-factor formula.

*100% minus 24%, being 1/2 of the 48% federal corporate income tax rate.

The result of permitting the Iowa supreme court's decision to stand will be that situation which the framers of the Constitution sought to avoid by the Commerce Clause. This Iowa tax has created a protectionist wall favoring local corporations and giving them a competitive advantage over corporations like the Association's members listed previously, for the latter will be taxed on more than 100% of their income, while the former will be taxed on less than 100% of their income.

Iowa's tax projects its taxing powers beyond its borders, and in so doing denies to the Association's members due process:

> "The taxation of property not located in the taxing State is constitutionally invalid, both because it imposes an illegitimate restraint on interstate commerce and because it denies to the taxpayer the process that is his due. A State will not be permitted, under the shelter of an imprecise allocation formula or by ignoring the peculiarities of a given enterprise, to 'project the taxing power of the state plainly beyond its borders'." *Norfolk & W. Ry Co.* v *Missouri State Tax Commission*, 390 US 317, 325 (1968).

For the foregoing reasons, the Association urges that this Court take jurisdiction and confirm the equitable guidance it provided in 1964 towards a nationally harmonious state taxation policy.

Respectfully submitted,

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